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July 24, 1987

Mr. Donald L. Kroger
Alameda County Assessor
1221 Oak Street
Oakland, CA 94612

Attention: Mr. _____

Dear Mr. _____:

This is in response to your June 11, 1987, letter to
wherein you referred to Revenue and Taxation Code
section 261(c), as added by Stats. 1984, ch. 678, in effect
January 1, 1985:

"A claimant for the welfare exemption which on the lien date has a possessory interest in publicly owned land, owns water rights, or owns improvements on land owned by another may in lieu of the recordation pursuant to subdivision (a) file a copy of the document giving rise to that possessory interest or water rights or file a written statement attesting to the separate ownership of those improvements with the assessor. That document copy or written statement shall not be required annually following the year in which it has been filed but shall remain in effect until such time as that possessory interest terminates or ownership of the water rights or improvements transfers".

and you requested that we "establish the rules and procedures for its application".

As you are aware, section 261(c) is an alternative to section 261(a), which provides in pertinent part that as a prerequisite to the allowance of the welfare exemption, the interest of the claimant in the property must be of record on the lien date in the office of the recorder of the county in which the property is located. As explained in the Legislative Counsel's Digest in Stats. 1984, ch. 678:

"Under existing law, as a prerequisite to the allowance of the welfare exemption with respect to taxes on real property, the interest of the claimant in the property must be of record on the lien date in the office of the recorder

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of the county in which the property is located. Failure of the claimant to establish the fact of that recordation to the assessor constitutes a waiver of the exemption.

"This bill would permit a claimant for the welfare exemption which on the lien date has a possessory interest in publicly owned land, owns water rights, or owns improvements on land owned by another in lieu of that recordation to file a copy of the document giving rise to that possessory interest or water rights or to file a written statement attesting to the separate ownership of those improvements with the assessor. It also would provide that such document copy or written statement shall not be required annually following the year in which it has been filed but shall remain in effect until such time as that possessory interest terminates or ownership of the water rights or improvements transfers."

Determinative in the case of section 261(a) is that the interest of the claimant in the property be of record on the lien date. In instances in which such is, subsequent to the lien date, demonstrated to have been the case, we have accepted such showings as timely showings for purposes of section 254.5 and section 261, with the result that claimants' properties continue to be eligible for the full exemption. This result is comparable to that provided for in Revenue and Taxation Code section 214.01, which pertains to acceptable statements of irrevocable dedication and which states that claimants whose articles of incorporation do not contain acceptable statements shall have until the next succeeding lien date to amend their articles to include such statements, without penalty.

Since section 261(c) is an alternative to section 261(a), it would seem that the same construction should be utilized; that is, claimants which on the lien date have a possessory interest in publicly-owned land, own water rights, or own improvements on land owned by another should be allowed to file copies of the documents giving rise to such possessory interests or water rights or to file written statements attesting to the separate ownership of such improvements with the assessor until the next succeeding lien date, without penalty. Given the ease in which the requirement of section 261(c) can be satisfied, we would anticipate brief periods between the times that claimants are notified or become aware of the filing requirement and the times of filing, periods well within the time allowable.

In conclusion, such is also consistent with our handling of instances in which claimants have Internal Revenue Service section 501(c)(3) and/or Franchise Tax Board section 23701d income tax exemption letters as of the lien date but provide

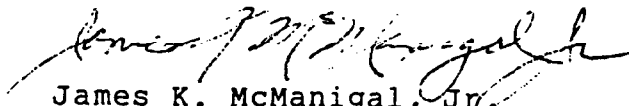
Mr. Donald L. Kroger

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assessors and us with copies thereof subsequent to the lien date: we have accepted such letters as timely letters for purposes of section 254.5 and section 214.8, with the result that the claimants' properties continue to be eligible for the full exemption.

Very truly yours,



James K. McManigal, Jr.
Tax Counsel

JKM/rz

cc: Mr. Gene Palmer